Stacey C. Stone, Esq.
sstone@hwb-law.com

Attorneys for Matanuska-Susitna Borough and Michael Brown

IN THE SUPREME COURT OF THE STATE OF ALASKA

| | |
|---|---|
| **In the Matter of the 2021 Redistricting Cases**<br>(Matanuska-Susitna Borough, S-18328)<br>(City of Valdez, S-18329)<br>(Municipality of Skagway, S-18330)<br>(Alaska Redistricting Board, S-18332) | Supreme Court No. **S-18332**<br>(S-18328, S-18329, S-18330, & S-18332 consolidated) |

Trial Court Case No: 3AN-21-08869CI (Consolidated)

HOLMES WEDDLE & BARCOTT, PC
701 WEST EIGHTH AVENUE, SUITE 700
ANCHORAGE, AK 99501-3408
TELEPHONE (907) 274-0666
FACSIMILE (907) 277-4657

**MATANUSKA-SUSITNA BOROUGH AND MICHAEL BROWN'S RESPONSE TO ALASKA REDISTRICTING BOARD'S PETITION FOR REVIEW**

## TABLE OF CONTENTS




HOLMES WEDDLE & BARCOTT, PC
701 WEST EIGHTH AVENUE, SUITE 700
ANCHORAGE, AK 99501-3408
TELEPHONE (907) 274-0666
FACSIMILE (907) 277-4657

HOLMES WEDDLE & BARCOTT, PC
701 WEST EIGHTH AVENUE, SUITE 700
ANCHORAGE, AK 99501-3408
TELEPHONE (907) 274-0666
FACSIMILE (907) 277-4657

## I. THE APPLICATION FOR CORRECTION OF ERROR DOES NOT REQUIRE THE COURT TO DETERMINE BOUNDARIES BUT REQUIRES REMAND TO THE BOARD TO COMPLY WITH THE CONSTITUTION

In its brief, the Board conveniently omits certain portions of the law and record in order to reclassify the request of the plaintiffs below to correct the errors in redistricting. The Board implies that the Court is engaging in redistricting rather than allowing the Board to do its work.[1] However, this wholly mischaracterizes the review provided for in the Constitution, as well as the challenges set forth in the underlying litigation.

Alaska Const. art. VI, sec. 11 provides that "Any qualified voter may apply to the superior court to compel the Redistricting Board, by mandamus or otherwise, to perform its duties under this article or to correct any error in redistricting" In its briefing, in reference to the same constitutional provision, the Board conveniently omitted the reference to returning the plan to the Board and merely focuses on the court's review.[2] However, as set forth in the constitution, it is the precise job of the court to compel the Board to comply with its duties under the Constitution.

## II. THE SUPERIOR COURT DID NOT ERR IN FINDING THAT THE BOARD MUST MAKE A GOOD FAITH EFFORT TO CONSIDER AND INCORPORATE THE CLEAR WEIGHT OF PUBLIC COMMENT

In its brief, the Board argues that Alaska Const., art. VI, sec. 10 is merely "procedural" and has no "substantive requirement."[3] In doing so, the Board argues

[1] Board Petition, pg. 19-20.
[2] Board Petition, pg. 19
[3] Board Petition, pg. 22

essentially that the only purpose of the public hearings is to gain further information from the public through a "public forum" where the Board can receive comment on its work, rather than a responsibility to use that public comment to form and support the Board's reasoning and implement the comments into the redistricting process.[4] The Board makes the far-fetched and straw man argument that the court's requirement that the Board make a "good-faith effort to consider and incorporate the clear weight of public comment" implies that any quantitative majority of public comment must be adopted outright in the Board's plan.[5] This is a clear misreading of the ruling, and misconstrues "weight" with "simple majority," turning an arguably subjective analysis into a hardline quantitative inquiry.

Alaska Const., art. VI, sec. 10 provides in pertinent part, "the board shall adopt one or more proposed redistricting plans. The board shall hold public hearings on the proposed plan, or, if no single proposed plan is agreed on, on all plans proposed by the board." Through its ruling, the court simply memorialized the actions already taken by the Alaska Supreme Court in previous redistricting analyses, looking to public comment to guide and shape the proper plan to be adopted by the Board. For example, the *Hickel* court made special mention of multiple different testimonies from the public to support and justify their findings.[6]

HOLMES WEDDLE & BARCOTT, PC
701 WEST EIGHTH AVENUE, SUITE 700
ANCHORAGE, AK 99501-3408
TELEPHONE (907) 274-0666
FACSIMILE (907) 277-4657

[4] Board Petition, pg. 24.
[5] Board Petition, pg. 25, 32-34.
[6] *Hickel v. Southeast Conference,* 846 P.2d 38, 53 (Alaska 1992) (noting "considerable testimony" from Mat-Su residents regarding linkage between their borough and that of Palmer, Wasilla, and Anchorage for purposes of determining levels of socio-economic interactions); *Id.* at 54 (looking to testimony from an Inupiaq community leader from Barrow and a representative in the state legislature and Athabaskan community leader from

HOLMES WEDDLE & BARCOTT, PC
701 WEST EIGHTH AVENUE, SUITE 700
ANCHORAGE, AK 99501-3408
TELEPHONE (907) 274-0666
FACSIMILE (907) 277-4657

In the present case, the Board was presented with overwhelming evidence, not only from residents of the Mat-Su Borough, but from Valdez as well, regarding both their desire not to be paired together but also the physical separation and disparate socio-economic characteristics exhibited by each location. On the contrary, there is no readily identifiable testimony from anyone outside of the Board favoring such a pairing. This testimony falls squarely within the "clear weight of public comment" advanced by the Court as necessary for the Board to take heed of, and commensurate with the testimony analyzed by the *Hickel* court in justifying its findings. The Board's decision to ignore this testimony in favor of nothing but its own whims and desires flies in the face of both the constitutional requirements and Supreme Court precedent.

The Board similarly argues that its public hearings were sufficient in part because the public could have commented on any aspect of redistricting.[7] However, it is unreasonable to expect the public to comment on items not included in the presented plans. The public can only reasonably be expected to prepare comment on what has been presented, rather than a hypothetical impact they may not be presently aware of. Even if the public was able to accurately predict all possible iterations of a redistricting plan and prepare comments challenging any potential issues associated therewith, the Board would open the door to thousands of hours of testimony from citizens in all 40 districts regarding

Rampart testifying as to the physical separation of and socio-economic differences between the two cultures).

[7] Board Petition, pg. 35.

each element of the constitutional mandates with respect to pairings with each neighboring area, whether or not proposed in the Board's plan or even in the contemplation of the Board.

Reading the requirement to hold public hearings for the sole purpose of receiving comment with no affiliated requirement to make a good faith effort to take note of and incorporate such comments into a final plan misreads the language and spirit of art. VI, sec. 10. Such a narrow and cursory reading makes the purpose of public hearings useless and nothing more than a sham for the public. As a public entity formed for the purpose of serving Alaska residents, the voice of such residents should be read to play a part in the final decisions adopted by the Board.

## III. THE SUPERIOR COURT DID NOT ERR WITH REGARD TO THE OPEN MEETINGS ACT, BUT DID ERR BY FINDING NO REMEDY WITH REGARD TO THE SERIOUS AND CHRONIC VIOLATIONS OF THE OPEN MEETINGS ACT

As an initial matter, the Board is errant in its assertion that the court erred by finding any violation of the Open Meetings Act ("OMA").[8] The Board repeatedly hid behind the guise of either executive sessions or attorney-client privilege. The use of executive sessions must be only for limited purposes, as the Board is conducting the work of the public. The Board repeatedly entered into executive session without properly stating the basis for the same. Given the Board's failure to strictly comply with the OMA and requirements to convene an executive session, it may not now avail itself of the protections afforded by the executive session exception. It is proper that the plan be considered void as a result of the OMA violations and remand the plan for correction by the Board.

[8] Board Petition, pg. 66.



HOLMES WEDDLE & BARCOTT, PC
701 WEST EIGHTH AVENUE, SUITE 700
ANCHORAGE, AK 99501-3408
TELEPHONE (907) 274-0666
FACSIMILE (907) 277-4657

HOLMES WEDDLE & BARCOTT, PC
701 WEST EIGHTH AVENUE, SUITE 700
ANCHORAGE, AK 99501-3408
TELEPHONE (907) 274-0666
FACSIMILE (907) 277-4657

The court acknowledged, "that Board members typically moved for executive session only by identifying the specific section of the Open Meetings Act which the meeting purportedly fell under."[9] The court further found:

> On September 7, 2021, Board Member Bahnke moved for executive session under AS 44.62.310(c)(4) in order to "receive legal advice from Mr. Singer to inform the process and direction moving forward."[10]
>
> On September 17, 2021, Board Member Marcum requested an executive session be added to the schedule for September 20, 2021, as Member Binkley articulated, to receive "guidance from the Board's legal counsel on some areas that we have to be cautious about." However, an executive session did not occur on September 20, 2021.[11]
>
> On November 2, 2021, Board Member Bahnke made a motion to enter executive session under AS 44.62.310(c)(3) and (4) and quoted the statute. The November 2, 2021 session lasted roughly two and a half hours.[12]
>
> On November 5, 2021, at the beginning of the proceeding, Board Member Simpson requested the Board enter executive session to receive advice from counsel regarding a Voting Rights issue and evaluate where the Board stood on that question. Board Member Simpson then moved the Board to enter Executive Session "for the purpose of receiving legal advice" under AS 44.62.310(c)(3), quoting the statute. Upon exiting this session, Board Member Marcum explained that she applied the "legal parameters" to map v.3.[13]
>
> Also on November 5, 2021, Board Member Bahnke initially requested the Board enter executive session before considering the final map. What followed was a heated discussion between Board Members Marcum and Borromeo, where Board Member Marcum states that she believes it is inappropriate to criticize another's map during public session, and felt such deliberative discussions were only appropriate during "private" sessions. At the end of this discussion, Board Member Borromeo moved the Board

[9] Exc. 655.
[10] *Id.*
[11] *Id.*
[12] *Id.*
[13] *Id.*

to enter executive session under Alaska Statute 44.62.310(c), quoting the statute.[14]

On November 8, 2021, Chairman Binkley articulated that the Voting Rights Act Consultant was waiting online and as such, asked for someone to make a motion that that Board should enter Executive Session in order to speak with the VRA consultant "on some of the issues that are before [the Board] with this process." Board Member Borromeo subsequently moved the Board to enter Executive Session "for purposes related to receiving legal counsel for the Redistricting Board."[15]

On November 8, 2021, following a suggestion by Board Member Marcum that there may be questions regarding a "race issue" Mr. Singer suggested such questions should be discussed in executive session. Following other discussion regarding Fairbanks pairings and district numbering, the Board entered an executive session for legal advice regarding the proposed Senate parings in Anchorage. The Board exited Executive Session and entered recess at 6:25 p.m., and explained that the Board would reenter Executive Session immediately the following morning at 9:00 a.m.[16]

On November 9, 2021, the Board entered Executive Session at 9:00 a.m. without a motion being made during public session. The Board reentered public session explaining that it was confronted with many legal issues as it approached finalizing the Senate pairings. As Chairman Binkley was providing this explanation to the public, Board Member Marcum interrupted and immediately moved to accept senate pairings. The motion passed with pushback from Board Members Borromeo and Bahnke. Board Member Borromeo expressed very strong opposition to pairing then-numbered districts 18 and 24. Motions to reconsider the vote failed.[17]

The court additionally found:

The Board at times entered Executive Session on a motion that only stated the relevant section of AS 44.62.310 under which the Executive Session was to be convened and did not state the subject of the meeting or provide any further information as required by statute. This was done on September 7, November 2, twice on November 5, and November 9. There were also times when the reasoning for the executive session was

[14] Exc. 655-656.
[15] Exc. 656.
[16] *Id.*
[17] Exc. 656-657.

HOLMES WEDDLE & BARCOTT, PC
701 WEST EIGHTH AVENUE, SUITE 700
ANCHORAGE, AK 99501-3408
TELEPHONE (907) 274-0666
FACSIMILE (907) 277-4657

> expressed with some level of specificity at some other time in the Board Meeting. However, the statute is clear. The motion to convene an executive session itself must "clearly and with specificity describe the subject of the proposed executive session." Only specifying the relevant section of the Open Meetings Act is inconsistent with the statutory mandate that the motion identify the subject of the session and made "clearly and with specificity."[18]
>
> When the Board motions for executive sessions without the required specificity, it leads to significant ramifications for the public. When the subject of the session is not made clear to the public, that lack of information erodes the public trust and leads to implications that the Board misused executive sessions. Such erosion of the public trust is contrary to the spirit and the express purpose of the Open Meetings Act. The statute makes clear that the Board has a responsibility to protect the public's "right to remain informed." The public expects the Board will conduct its business openly, and when it cannot discern why the Board is entering into an Executive session, it allows for the inference that the executive session is being improperly convened.[19]
>
> Where executive sessions were convened following a vague motion which did not specify the meeting's subject, those executive sessions were in violation of the Open Meetings Act. These sessions occurred on September 7, November 2, November 5, and November 9…[20]

The court missed two other executive sessions that were convened on November 3, 2021 and November 4, 2021.

Near the end of the day on November 3, 2021, the Board discusses whether it should try to map options that pair Valdez with the Prince William Sound communities when one of the members asks Matt Singer whether pairing Valdez with MSB would create a legal

[18] Exc. 657.
[19] Exc. 658.
[20] *Id.*



HOLMES WEDDLE & BARCOTT, PC
701 WEST EIGHTH AVENUE, SUITE 700
ANCHORAGE, AK 99501-3408
TELEPHONE (907) 274-0666
FACSIMILE (907) 277-4657

issue for the Board.[21] After deciding that question would be a topic for executive session,[22] Mr. Singer states, "If folks have those kinds of questions, that's one way we could finish the day."[23] When members of the Board indicate support for finishing the day in executive session,[24] Chair Binkley announces that the Board will, "take a little break, five-minute break, and then we'll come back in. And if it's desired, the board will go into executive session with some legal issues to address."[25] When the Board comes back into session, Member Simpson moves for the Board to enter executive session by quoting the statute, AS 44.62.0310(c)(3)-(4).[26]

It is unclear how long the Board is in executive session, as it did not go back on record to adjourn, and at the start of the November 4 meeting there is no mention of the executive session. However, when the Board is discussing whether an executive session would be appropriate on November 4, Member Bahnke describes the timeframe for the November 3 executive session as, "yesterday's we planned from 4:30 to 5, and I think we

HOLMES WEDDLE & BARCOTT, PC
701 WEST EIGHTH AVENUE, SUITE 700
ANCHORAGE, AK 99501-3408
TELEPHONE (907) 274-0666
FACSIMILE (907) 277-4657

[21] MSB Petition for Review, pg. 29-30. (In reference to "indiscernible" sections of Nov. 3 transcript page 337, Exc. 40); Video R. at GMT20211103-170718 at. 6:37:08 to 6:38:15 (See Video Excerpt of Record at footnote 257).

[22] MSB Petition for Review, pg. 30. (In reference to "indiscernible" sections of Nov. 3 transcript page 337, Exc. 40); Video R. at GMT20211103-170718 at. 6:37:08 to 6:38:15 (See Video Excerpt of Record at footnote 257).

[23] Exc. 40.

[24] MSB Petition for Review, pg. 30-31. (In reference to "indiscernible" sections of Nov. 3 transcript page 337, Exc. 40); Video R. at GMT20211103-170718 at. 6:37:08 to 6:38:15 (See Video Excerpt of Record at footnote 257).

[25] Exc. 40.

[26] Exc. 41.

left here close to 5:30."[27] Since the Board adjourned at approximately 4:45 on November 3,[28] the Board was therefore in executive session for approximately 45 minutes.

On November 4, 2021, the Member Bahnke asks Matt Singer whether they should be prepared to go into executive session, "based on what you observed yesterday, -- or is it premature?"[29] Mr. Singer states it is premature and that, "If I see a decision on which I would like to share legal advice with you, I'll suggest that we have an executive session."[30] Member Simpson had concerns with this approach, stating,

> If we wait for counsel to, you know, throw up a red flag and say I need to talk to you guys, that kind of implies something's about to go sideways, I would rather we just sort of have some ordinary scheduled executive sessions where we could talk candidly to counsel without throwing up a red flag, just to talk through – where we're at, at any given time.[31]

The Board agrees and decides to schedule an executive session at 11:00AM to, "make sure we're on track legally."[32] The Board then goes into executive session sometime after 11:00AM with Member Simpson making a motion for executive session by quoting the statute, AS 44.62.0310(c)(3)-(4).[33] The Board planned to go into executive session and then come back on record after lunch at 1:00PM.[34] When the Board comes back on record

HOLMES WEDDLE & BARCOTT, PC
701 WEST EIGHTH AVENUE, SUITE 700
ANCHORAGE, AK 99501-3408
TELEPHONE (907) 274-0666
FACSIMILE (907) 277-4657

[27] Exc. 691.
[28] Exc. 42. Earlier in the day, the Board came back on the record at 1:00 PM at video mark 3 hours and 4 minutes (Exc. 687). The meeting ends at video mark 6 hours and 49 minutes (Exc. 42). The board therefore adjourned at approximately 4:46 PM.
[29] Exc. 689.
[30] *Id.*
[31] Exc. 690-691.
[32] Exc. 691.
[33] Exc. 693-694.
[34] Exc. 692; Exc. 693.

a little after 1:00PM they do not state how long they were in executive session for or what was discussed.[35]

As an initial matter, it is clear that despite the Board's arguments otherwise, it is subject to the OMA. The OMA, by its terms, applies to every "government body" of a "public entity."[36] "Governmental body" is defined to include "an assembly, council, board, commission, committee, or other similar body of a public entity with the authority to establish policies or make decisions for the public entity or with the authority to advise or make recommendations to the public entity," and "public entity" is defined to include "an entity of the state or of a political subdivision of the state including an agency, a board or commission, the University of Alaska, a public authority or corporation, a municipality, a school district, and other governmental units of the state or a political subdivision of the state."[37] As a public body and board serving the State of Alaska, the Board clearly falls within the Act's ambit. Despite the Board's protests, this is similarly supported not only by the stated purpose of the Act,[38] but by legal precedent[39] and even the Board's own

HOLMES WEDDLE & BARCOTT, PC
701 WEST EIGHTH AVENUE, SUITE 700
ANCHORAGE, AK 99501-3408
TELEPHONE (907) 274-0666
FACSIMILE (907) 277-4657

[35] Exc. 695.
[36] AS 44.62.310(a).
[37] AS 44.62.310(h)(1), (3).
[38] AS 44.62.312(a)(2) ("it is the intent of the law that actions of [specified governmental units] be taken openly and that their deliberations be conducted openly"); AS 44.62.312(a)(4) ("the people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know"); AS 44.62.312(a)(5) ("the people's right to remain informed shall be protected so that they may retain control over the instruments they have created").
[39] *In re 2001 Redistricting Cases*, No. 3AN-01-8914CI, 2002 WL 34119573 (Alaska Super. Feb. 01, 2002) (*citing Hickel v. Se. Conf.*, 846 P.2d 38, 57 (Alaska 1992), as modified on reh'g (Mar. 12, 1993) (noting that "[t]he Alaska Supreme Court has ruled that the Board must comply with the Open Meetings Act); *In re: 2011 Redistricting Cases*, No.

adopted policies.[40]

To be excluded from disclosure under the OMA, meetings of the Board must be excluded under the Act or otherwise protected pursuant to law, which the Board argues here is the case because it claims they are subject to the attorney-client privilege as part of executive session.[41] The executive session carve-out from the OMA's disclosure requirements "shall be construed narrowly in order to effectuate the policy stated in (a) of this section and to avoid exemptions from open meeting requirements and unnecessary executive sessions."[42] General legal advice may not be discussed during executive session.[43] Although the attorney-client privilege exists alongside the Act, it must be applied narrowly and "only when the revelation of the communication will injure the public interest or there is some other recognized purpose in keeping the communication confidential."[44]

Even when called for a proper purpose, executive sessions must be convened by motion in which the matters to be discussed must be described "clearly and with specificity."[45] As noted above and acknowledged by the superior court, the board members routinely failed to do so, only invoking an executive session by statutory reference or with general allusion to needing general legal advice. Such references and motions can hardly

4FA-11-2209CI, 2013 WL 6074059, at *31 (Alaska Super. Nov. 18, 2013) ("[u]nder the Open Meetings Act the Board's work is, with limited exceptions, to be conducted in open session.").

[40] Exc. 720-721. Board Notice of Filing Policy (Jan. 16, 2022).

[41] AS 44.62.310(a); Board Petition, pg. 66.

[42] AS 44.62.312(b).

[43] *Cool Homes, Inc. v. Fairbanks North Star Borough*, 860 P.2d 1248, 1262 (Alaska 1993).

[44] *Id*.

[45] AS 44.62.310(b).



HOLMES WEDDLE & BARCOTT, PC
701 WEST EIGHTH AVENUE, SUITE 700
ANCHORAGE, AK 99501-3408
TELEPHONE (907) 274-0666
FACSIMILE (907) 277-4657

be made to be "clear" and "specific", and should not be found to shield the board members from improper discussions.

The Board repeatedly stated that litigation was inevitable so they had a right, in spite of the OMA, to convene executive sessions and use the attorney-client privilege as a shield. However, in the *Detroit News* case, while acknowledging that "business" does not include all pending litigation, the court went so far as to limit the litigation exception to note that "anticipation of litigation is not enough at this stage of the process to overcome the constitutional mandate that business be conducted in the open. Indeed, allowing the simple prospect of litigation to shield the Commission's discussions on how to make a map would threaten to swallow the open-meeting requirement altogether."[46] The Board's failure to make motion by specific reference to the items to be discussed in executive session, if not rendering such executive sessions void outright, should not be further extended to shield the discussions under the vague reference of anticipation of litigation. Since general legal advice may not be discussed in executive session, the board's failure to specify the precise extent of such discussions should not further shield them from disclosure of meetings that are, absent narrowly defined exceptions for clearly designated discourse subject to confidentiality under the law, designed to inform and be available for the public view.

[46] *Detroit News, Inc. v. Independent Citizens Redistricting Commission*, 2021 WL 6058031 at *8 (2021).



HOLMES WEDDLE & BARCOTT, PC
701 WEST EIGHTH AVENUE, SUITE 700
ANCHORAGE, AK 99501-3408
TELEPHONE (907) 274-0666
FACSIMILE (907) 277-4657

HOLMES WEDDLE & BARCOTT, PC
701 WEST EIGHTH AVENUE, SUITE 700
ANCHORAGE, AK 99501-3408
TELEPHONE (907) 274-0666
FACSIMILE (907) 277-4657

## IV. THE SUPERIOR COURT WAS CORRECT IN ITS DETERMINATIONS REGARDING DISCOVERY

The superior court was correct in its determinations regarding the discovery propounded by the Board. The Board from the inception of this matter tried to change the nature of this matter from review of an administrative determination into a trial as to the credibility and motivations on behalf of the parties challenging the redistricting plan.[47] This in spite of the fact that the Board admitted by its own briefing that the superior court was sitting as a court of intermediate review.[48]

Alaska R. Civ. P. 90.8 governs the process for this intermediate and expedited review. The review is limited to the record, and "such additional evidence as the court, in its discretion, may permit."[49] The Board seeks to expand and convolute this process and make it even more expensive and litigious of a process, further putting any ability to challenge this public body out of reach by the average citizen.

In an effort to streamline matters given the extremely expedited nature of the litigation, the plaintiffs filed a joint motion to include certain categories of documents in the administrative record. In opposition, the Board demonstrated its lack of understanding for the intermediate review and pushed to resort the redistricting review to a normal trial process.[50] Despite the fact the Board is a public entity doing the work of the public, the

[47] Board petition, pg. 71
[48] *See* Exc. 722-727. Board Emergency Mot. for Recon. (Feb. 18, 2022).
[49] Alaska R. Civ. P. 90.8.
[50] Exc. 696-703 Board Opp. To Joint Mot to Include Certain Categories of Documents in Admin. Record (Dec. 20, 2021).

Board for the first time signaled its intent to hide behind the guise of executive session and attorney-client privilege to protect from the public eye the work of the public.[51] Given its public purpose, it was shocking that the Board balked at the notion that it would have to create a privilege log for those items which it did not intend to release publicly.[52]

The Board insists that it was forced to compel discovery in the underlying litigation wholly ignoring those limits set forth in Alaska R. Civ. P. 90.8 regarding the narrow scope of additional evidence to be allowed during the course of any review. Furthermore, even if the Board were correct in its efforts to obtain discovery, it wholly ignored the duties to act in good faith and confer with the other parties prior to filing motion work with the court, only increasing fees and costs of all parties and wasting judicial resources.[53]

It was clear from the outset of this litigation, that rather than have the court review the work performed by the Board and determine whether or not it was constitutional, that the Board was going to try and use sharp litigation tactics to make the plan fit into a box and include evidence that was never even considered by the Board to try and justify the plan as constitutional. For example, when asked about why there was information about sports teams included in his trial testimony, Peter Torkelson testified that he recalled reading case law that sporting events was an indicator of connection between communities.[54] Given the same, he "thought that was interesting and included it."[55] He

[51] *Id*. Exc. 696.
[52] *Id*. Exc. 697.
[53] Exc. 709; Exc. 714. Order Deny Mot to Compel (Jan. 15, 2022).
[54] Exc. 706.
[55] *Id*.

HOLMES WEDDLE & BARCOTT, PC
701 WEST EIGHTH AVENUE, SUITE 700
ANCHORAGE, AK 99501-3408
TELEPHONE (907) 274-0666
FACSIMILE (907) 277-4657

testified that the search had occurred sometime in the last three weeks, and that it was not something that the Board considered in its deliberations.[56] In spite of the fact that there was no evidence the Board considered the sports team aspect, the court relied on this testimony as a factor of socioeconomic integration.[57]

Given the nature of the instant matter, it is imperative for this Court to reiterate that the process is one of review, not a full blown trial. That the necessity is to review the actions of the Board, not to create new evidence that somehow justifies the actions of the Board as constitutional, when indeed, the Board never met with its constitutional requirements to form districts that were compact, contiguous, socioeconomically integrated and as close to the quotient as practicable.

DATED this 10th day of March 2022, at Anchorage, Alaska.

HOLMES WEDDLE & BARCOTT, P.C.
Attorneys for Matanuska-Susitna Borough
and Michael Brown

By: */s/ Stacey C. Stone*
Stacey C. Stone
Alaska Bar No. 1005030

HOLMES WEDDLE & BARCOTT, PC
701 WEST EIGHTH AVENUE, SUITE 700
ANCHORAGE, AK 99501-3408
TELEPHONE (907) 274-0666
FACSIMILE (907) 277-4657

[56] *Id*. Exc. 706-707.
[57] Exc. 577.

Stacey C. Stone, Esq.
sstone@hwb-law.com

Attorneys for Matanuska-Susitna Borough and Michael Brown

IN THE SUPREME COURT OF THE STATE OF ALASKA

| | |
|---|---|
| **In the Matter of the 2021 Redistricting Cases**<br>(Matanuska-Susitna Borough, S-18328)<br>(City of Valdez, S-18329)<br>(Municipality of Skagway, S-18330)<br>(Alaska Redistricting Board, S-18332) | Supreme Court No. **S-18332**<br>(S-18328, S-18329, S-18330, & S-18332 consolidated) |

Trial Court Case No: 3AN-21-08869CI (Consolidated)

## CERTIFICATE OF SERVICE AND TYPEFACE

The undersigned hereby certifies that on March 10, 2022 a true and correct copy of *Matanuska-Susitna Borough and Michael Brown's Response to Alaska Redistricting Board's Petition for Review*, *Supplement to Excerpt of Record*, and this *Certificate of Service and Typeface*, were sent to each attorney or party of record by e-mail at the addresses listed below. The undersigned further certifies that the typeface used in the aforementioned documents is 13 point Times New Roman, in accordance with Appellate Rule 513.5(c).

SCHWABE WILLIAMSON & WYATT
Matthew Singer, Esq.
Lee C. Baxter, Esq.
Kayla J. F. Tanner, Esq.
msinger@schwabe.com
aginter@schwabe.com
lbaxter@schwabe.com
ktanner@schwabe.com
jhuston@schwabe.com

ASHBURN & MASON, P.C.
Eva R. Gardner, Esq.
Michael S. Schechter, Esq.
Benjamin J. Farkash, Esq.
erg@anchorlaw.com
mike@anchorlaw.com
ben@anchorlaw.com
sarah@anchorlaw.com
heidi@anchorlaw.com
karina@anchorlaw.com

HOLMES WEDDLE & BARCOTT, PC
701 WEST EIGHTH AVENUE, SUITE 700
ANCHORAGE, AK 99501-3408
TELEPHONE (907) 274-0666
FACSIMILE (907) 277-4657

BRENA, BELL & WALKER, P.C.
Robin O. Brena, Esq.
Jake W. Staser, Esq.
Laura S. Gould, Esq.
Jon S. Wakeland, Esq.
rbrena@brenalaw.com
lgould@brenalaw.com
jwakeland@brenalaw.com
jstaser@brenalaw.com
mhodsdon@brenalaw.com
mnardin@brenalaw.com

BIRCH HORTON BITTNER & CHEROT
Holly Wells, Esq.
Zoe A. Danner, Esq.
Mara Michaletz, Esq.
hwells@bhb.com
zdanner@bhb.com
mmichaletz@bhb.com
tevans@bhb.com
pcrowe@bhb.com
tmarshall@bhb.com

SONOSKY, CHAMBERS, SACHSE, MILLER & MONKMAN, LLP
Nathaniel Amdur-Clark, Esq.
Whitney A. Leonard, Esq.
Nathaniel@sonosky.net
Whitney@sonosky.net

STATE OF ALASKA – ATTORNEY GENERAL'S OFFICE
Thomas Flynn, Esq.
thomas.flynn@alaska.gov
cheryl.burghart@alaska.gov
anc.law.ecf@alaska.gov

AMERICAN CIVIL LIBERTIES UNION OF ALASKA
Susan Orlansky, Esq.
Richard Curtner, Esq.
sorlansky@acluak.org
richcurtner13@gmail.com

s/*Mackenzie Milliken*
Paralegal
Holmes Weddle & Barcott, P.C.

HOLMES WEDDLE & BARCOTT, PC
701 WEST EIGHTH AVENUE, SUITE 700
ANCHORAGE, AK 99501-3408
TELEPHONE (907) 274-0666
FACSIMILE (907) 277-4657